

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of

Rural Health Care Support Mechanism

Request for Review by Alaska Communications
of Decision of Universal Service Administrator
and Provisional Petition for Waiver of Section
54.720(a) of the Commission's rules

WC Docket No. 02-60

Sitka Community Hospital (HCP No. 11194)

Funding Request No. 18464381
(Funding Year 2018)

Request for Review and Provisional Petition for Waiver

Richard R. Cameron
Cameron Law & Policy LLC
2550 M St N.W., Suite 319
Washington, D.C. 20037
(202) 230-4962
Richard@CameronLawPolicy.com

Leonard A. Steinberg
Senior Vice President & General Counsel
Alaska Communications Systems Group, Inc.
600 Telephone Avenue
Anchorage, Alaska 99503

for Alaska Communications

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Pursuant to Sections 1.3 and 54.719(b) and (c) of the Commission's rules, 47 C.F.R.

§§ 1.3, 54.719(b-c), Alaska Communications Systems Holdings, Inc. ("Alaska Communications") requests that the Wireline Competition Bureau (the "Bureau") review the decision of the Universal Service Administrative Company ("USAC") to commit funding under the above-referenced funding request for only 26 days, rather than the full portion of the year for which the service that Alaska Communications provided to its customer, Sitka Community Hospital ("SCH"), was eligible.

I. Summary

Effective as of October 4, 2018, SCH upgraded the 80 Mbps MPLS service at issue in this Request for Review, which it purchased under a contract signed during the Funding Year 2015 competitive bidding period (the "2015 Contract"), to 100 Mbps MPLS service purchased under a new contract signed during the Funding Year 2018 competitive bidding period. In this case, USAC's unilateral, unannounced changes to its transition procedures, coupled with USAC's own error computing the 2015 Contract's Evergreen expiration date, converged to produce a shortfall in Rural Health Care ("RHC") Telecommunications Program support for 80 Mbps MPLS service purchased by SCH.

The shortfall arose, *first*, because the USAC Rural Health Care Division ("RHCD") departed from its longstanding announced practice of adjusting the dates of Telecommunications

Program support to reflect the actual date during a Funding Year when a service upgrade takes place. Rather, USAC refused to provide any support for the 80 Mbps MPLS service after the 2015 Contract's Evergreen expiration date, on July 26, 2018. It made this decision despite the Bureau's prior determination that this funding should be available for this Funding Request for an estimated three full months.¹

Second, compounding the error, USAC miscalculated the Evergreen expiration date of the 2015 Contract. Under the terms of that Contract, the three year term of service for the 80 Mbps MPLS began, not on the signature date of the contract, but on the commencement date of the service, which was October 14, 2015. Thus, in fact, no adjustment of the dates should have been necessary.

To the extent required, Alaska Communications also asks the Bureau to waive the 60-day filing deadline set forth in Section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a).²

II. Background

A. Miscalculation of the 2015 Contract Evergreen Period

On May 26, 2015, SCH filed Form 465 No. 43155113, requesting telecommunications services supported by the Rural Health Care ("RHC") Telecommunications Program. Following successful completion of the competitive bidding process for Funding Year ("FY") 2015, SCH signed a three-year contract with Alaska Communications on July 27, 2015 for 80 Mbps Multi-Protocol Label Switching ("MPLS") service (the "2015 Contract").³

¹ See Funding Commitment Letter, Sitka Community Hospital, HCP No. 11194, Funding Request No. 18464381 (Dec. 21, 2018) (the "2018 Funding Commitment Letter").

² Alaska Communications also requests waivers of any additional rules necessary to effectuate relief under this Request for Review, including but not limited to the RHC programmatic funding cap established by Section 54.675(a) of the Commission's rules, 47 C.F.R. § 54.675(a).

³ Alaska Communications Enterprise Services Agreement with Sitka Community Hospital, USAC Contract ID No. 867704 (July 27, 2015).

Although the 2015 Contract was signed on July 27, 2015, the three-year term for the 80 Mbps MPLS service did not start until after installation of the service was complete. Specifically, Section 2 of the 2015 Contract states that it “will terminate on the applicable term anniversary of the Billing Commencement Date (the ‘Initial Term’).” Section 7, in turn, specifies that the “Billing Commencement Date” shall be “five (5) business days after the date the Order Completion Notice is issued,” which occurs only after the service is “installed in accordance with a schedule mutually agreed to be the Parties.” In this case, the Billing Commencement Date occurred on October 14, 2015, as reflected in the Funding Commitment Letter for FY 2015,⁴ meaning that the three-year term for the 80 Mbps MPLS service specified in the 2015 Contract ran from October 14, 2015 through October 13, 2018.

USAC committed funding for this 80 Mbps service for the portion of FY 2015 that followed the Billing Commencement Date, and for the entirety of FY 2016 and FY 2017. While USAC placed the 2015 Contract in “Evergreen Status,” USAC staff computed the evergreen term incorrectly. Specifically, while the 2015 Funding Commitment Letter stated that the “[e]vergreen endorsement and competitive bidding exemption end *when the contract expires*” [emphasis supplied], it contained an incorrect Contract Expiration Date of July 26, 2018. This date appears to have been computed based on signature date of the 2015 Contract, rather than the actual date of expiration of the contract service term, which was three years after the Billing Commencement Date, as specified under the terms of the 2015 Contract itself.

⁴ See Funding Commitment Letter, Sitka Community Hospital, HCP No. 11194, Funding Request No. 15722831 (Dec. 23, 2015) (the “2015 Funding Commitment Letter”), attached hereto as **Exhibit A**.

B. USAC's Unannounced Change in Funding Procedures for Upgraded Service under New Contracts

Healthcare providers' multiyear, Evergreen contracts typically expire part-way through a funding year, since installation schedules and USAC funding commitment delays seldom align to permit service to begin precisely on July 1. During the Funding Year 2017 competitive bidding period, SCH's service provider, Alaska Communications, requested guidance from USAC on how a healthcare provider should properly request RHC support for a year when its existing Evergreen contract is expiring and service will be upgraded thereafter under a new, competitively-bid contract. A representative of the USAC Rural Health Care Division ("RHCD") confirmed as correct that, "[o]nce a Start Date has been entered for the post-upgrade 466[,] the stop date on the pre-upgrade will be updated to match."⁵ Thus, USAC confirmed that it would not require a separate, supplemental month-to-month funding request to continue supporting the old service in the face of delays installing the upgraded service.

In the competitive bidding period that preceded FY 2018, SCH found itself in exactly that situation, with the 2015 Contract expiring part-way through the upcoming funding year. On or about June 28, 2018, Grant Turner, then Sitka Community Hospital's IT Manager, contacted the USAC RHC Help Desk to confirm whether the previous guidance remained in effect. At that time, USAC informed Mr. Grant that it was, and that USAC would simply "adjust the dates" based on the start date of the new service. Critically, the USAC Help Desk representative told Mr. Turner that there was no need for SCH to file anything in order to extend the funding or to alter the Evergreen termination date. He therefore filed SCH's FY 2018 funding request in the

⁵ See Email correspondence from Matthew Squire, USAC, to Abigail Hanley, Alaska Communications (July 19, 2017), attached hereto as **Exhibit B**.

full expectation that USAC's Rural Health Care staff would adjust the dates as promised, enabling SCH to receive support until the beginning of SCH's new contract.

C. The Bureau's Rate Review and USAC Funding Commitment Shortfall

Before USAC issued FY 2018 funding commitment letters, the Bureau undertook a review of all of Alaska Communications' RHC Telecommunications Program rural rates. Following that review, the Bureau provided a letter to Alaska Communications, with a copy to USAC, dated December 14, 2018, explicitly approving a monthly recurring charge for the 80 Mbps MPLS service governed by the 2015 Contract for an estimated period of three months in Funding Year 2018, which was the whole number of months most closely aligned with the actual date (October 4, 2018) on which the 80 Mbps MPLS service had been upgraded to 100 Mbps MPLS under the new contract.⁶ Despite the Bureau's explicit approval, USAC's December 21 Funding Commitment Letter committed funding only through July 26, 2018, rather than for the entire period contemplated by the Bureau, or the correct Evergreen contract expiration date of October 13, 2018.

When SCH received the 2018 Funding Commitment Letter showing no adjustment to the 2015 Contract expiration date, Mr. Turner again contacted the USAC RHC Help Desk to remind them of their previous commitment, and again renew his request for USAC to adjust the date and commit funding for the full portion of Funding Year 2018 through October 4, 2018, when the 80 Mbps MPLS service had actually been upgraded under SCH's new 100 Mbps MPLS service, or at

⁶ See Letter from Elizabeth A. Drogula, Deputy Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, to Karen Brinkmann and Richard Cameron, Counsel to Alaska Communications (Dec. 14, 2018) (the "Bureau Letter"). The Bureau limited its approval to a three-month period because, by the date of the letter, the 80 Mbps MPLS service had been replaced with 100 Mbps MPLS service provided under a subsequent contract executed during the Funding Year 2018 competitive bidding period, *see* Funding Commitment Letter, FRN 18451801 (May 6, 2019).

least the full estimated three-month period through September 30, 2018 that had been expressly authorized by the Bureau. The Help Desk representative told Mr. Turner that SCH was “too late” to request month-to-month support following the purported expiration of the 2015 Contract’s Evergreen endorsement, but provided no new information concerning SCH’s request to adjust the dates, as described above.

Following that December 2018 exchange, Mr. Turner left his position at SCH to assume a new role with the City of Sitka government, but he nevertheless filed the Form 467 certifications associated with SCH’s 80 Mbps and 100 Mbps MPLS services. Thereafter, the matter fell to Alaska Communications to pursue. On or about May 1, 2019, having heard nothing further from USAC, Alaska Communications reached out to SCH for an update. SCH, likewise having heard nothing, provided Alaska Communications with only a copy of the original 2018 Funding Commitment Letter.

On June 5, 2019, Abigail Hanley, Program Manager, Compliance for Alaska Communications sent an email to “RHC-Assist” to ask for a status update and renew the request that USAC adjust the expiration date of the 2015 Contract and the associated commitment of FY 2018 support. In response to a call from Alaska Communications’ outside counsel to USAC’s Carolyn McCornac on June 6, 2019, Erin Williams of USAC requested that Alaska Communications provide a written summary of the previous course of events. The following day, Alaska Communications’ counsel e-mailed the requested summary to Ms. Williams and Carolyn McCornac at USAC. Counsel followed up with USAC representatives on July 21, 2019, asking the status of this matter. In response, on August 20, 2019, the parties held a further conference call that included Ms. Williams and Tanya Tiwari of USAC, Abigail Hanley of Alaska Communications, and outside counsel. During that call, Ms. Williams explained that

USAC would be making no adjustment to the 2018 Funding Commitment Letter, and that Alaska Communications would need to file a Request for Review to appeal that USAC decision to the Commission.

III. Discussion

A. USAC Should Commit Support for SCH's 80 Mbps MPLS for the Entire Portion of Funding Year 2018 When Alaska Communications Provided that Service

As discussed below, for two reasons, Alaska Communications requests that the Bureau direct USAC to correct the error in computing the expiration date of the 2015 Contract and the associated Evergreen endorsement to reflect the accurate date of October 13, 2018; and commit support for Funding Request No. 18464381 for the full portion of Funding Year 2018 during which Alaska Communications provided that service, through October 4, 2018 or, at a minimum, for the full three-month period, through September 30, 2018, specified in the Bureau Letter.

First, USAC limited support to the period through July 26 only as a result of its own clerical error and unannounced unilateral procedural change. Previously, in accordance with guidance provided to both Alaska Communications and SCH, USAC has followed a streamlined, efficient process for aligning the “before” and “after” support periods for services being upgraded under a new contract during a funding year. Correctly recognizing that it is virtually impossible to predict with precise accuracy the date, often many months in the future, when a particular service upgrade will take effect, USAC has previously permitted healthcare providers to adjust their Form 466 funding requests to reflect the actual service transition date. It has done so without regard for the expiration of the Evergreen endorsement of the old contract, again recognizing the value of simplifying the application process for small healthcare providers that cannot afford to hire dedicated specialized staff to master USAC's application requirements.

Neither Alaska Communications nor SCH should be penalized for USAC's unannounced decision to abandon that sensible procedure. While USAC is undoubtedly free to adjust its administrative procedures as it sees fit, it should not be permitted to do so in secret, to the detriment of healthcare providers that have acted in reliance on a former approach. In the case of this Funding Request, having announced no change, USAC should have followed its practice of adjusting the expiration date of the 2015 Contract to match the actual end date of the service later in the funding year.

That is particularly the case here because, if USAC had correctly determined the Evergreen contract term years earlier, no adjustment would in fact have been necessary. Although the 2015 Contract was signed on July 27, 2015, it explicitly provided that the three-year term of service for the 80 Mbps MPLS that is the subject of this funding request did not start until the Billing Commencement Date. In this case, Alaska Communications and USAC records agree that the term of service therefore began on October 14, 2015, after the installation of the service was complete. Therefore, USAC's Evergreen endorsement should have extended through the end of that term, until October 13, 2018.

The 2015 Funding Commitment Letter granted Evergreen status "[f]or the life of the contract," meaning that the "HCP is exempt from competitive bidding for the service(s) identified above, and therefore is not required to post a FCC Form 465 (Description of Services Requested and Certification Form)." Under its terms, the "life" of the 2015 Contract ran through October 13, 2018, regardless of the erroneous expiration date computed by USAC. Indeed, in at least one case where USAC misinterpreted identical language contained in a different Alaska Communications contract,

USAC has previously acknowledged and corrected its own error in determining the expiration date for evergreen contract endorsements.⁷ USAC should have reached a similar result here.

Second, at a minimum, USAC should have followed the Bureau's determination that this funding request was eligible for three months of support, through September 30, 2018. Specifically, for Funding Request No. 18464381, the Bureau Letter specifies not only the eligible monthly recurring charge, but also authorizes three months of service pursuant to the forecast established by the letter. The Bureau, having taken such care to align its forecasts to the actual in-service dates of the various services covered by the HCPs' funding requests, should expect (and direct) USAC to provide funding accordingly, at a minimum where there is no other allegation of noncompliance with Telecommunications Program rules.

B. Waiver of the Section 54.720(a) Filing Deadline and the Section 54.675(a) Funding Cap Will Serve the Public Interest

To the extent that a waiver is necessary, Alaska Communications request a waiver of the filing deadline set forth in Section 54.720(a) of the Commission's rules, 47 C.F.R. § 54.720(a). Section 54.720(a) requires any party seeking review of a USAC decision to file the request "within sixty (60) days from the date the Administrator issues a decision."

1. No Waiver of the Filing Deadline Appears Necessary

Alaska Communications believes that this request is timely. Following USAC's issuance of the 2018 Funding Commitment Letter on December 21, 2018, SCH and Alaska Communications immediately engaged in an informal process to request review by USAC of this issue and persuade USAC to correct its own manifest error. They did so based on prior advice from USAC that an error in the contract expiration date would be corrected by USAC upon issuance of an FCL;

⁷ See USAC Letter to Mr. Ramon Reyes, South Peninsula Hospital, Funding Request No. 1723532, "Notice of Resolved Issue" (June 14, 2019), attached as **Exhibit C**.

therefore they operated under the good-faith belief that USAC would correct the error. USAC's decision not to correct its error (which was contrary to its earlier South Peninsula Hospital precedent) was only communicated orally at the conclusion of that informal process during a conference call with Alaska Communications on August 20, 2019. The Commission should consider that process, which unfolded as a series of oral and written communications between December 21, 2018 and August 20, 2019, as constituting an unsuccessful Request for Review of this funding decision by USAC. The 60-day period for filing this Request for Review with the Commission, therefore, should be deemed to expire on Monday, October 21, 2019.⁸

2. To the Extent the Bureau Believes a Waiver of the Filing Deadline Is Necessary, Alaska Communications Respectfully Submits That Grant of Such a Waiver Will Serve the Public Interest

To the extent that the Bureau believes that SCH or Alaska Communications was required to file a formal, written Request for Review within 60 days after the date of the 2018 Funding Commitment Letter, Alaska Communications hereby requests a waiver of that filing deadline. The Commission may waive its rules for "good cause shown."⁹ More specifically, the Commission may exercise its discretion to waive a rule where special circumstances warrant a deviation from the general rule and such deviation would serve the public interest, or where the particular facts make strict compliance inconsistent with the public interest.¹⁰ In making this analysis, the Commission may take into account consideration of hardship, equity, or more effective implementation of overall policy on an individual basis.¹¹ This request meets that standard.

⁸ The 60th day after August 20, 2019 falls on Saturday, October 19, 2019. Therefore, this filing is due on the next business day thereafter, which is Monday, October 21, 2019. 47 C.F.R. § 1.4(j).

⁹ 47 C.F.R. § 1.3.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157, (D.C. Cir. 1969), *affirmed by WAIT Radio v. FCC*, 459 F.2d 1203 (D.C. Cir. 1972).

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

The Bureau has previously acknowledged that a waiver of the appeal filing deadline is appropriate where the applicant has made diligent efforts to work with USAC to correct errors in its funding commitment decisions in lieu of filing a formal Request for Review.¹² Indeed, the Bureau recently granted two waivers of the appeal filing deadline where E-rate applicants had first attempted to work informally with USAC staff to resolve their issues before filing a Request for Review, circumstances strikingly similar to those presented here. As summarized by the Bureau, “[t]o correct mistakes found on its funding commitment decision letter, [Applicant] worked with USAC personnel instead of filing an appeal” and “[a]fter working with USAC staff for a considera[ble] period of time, the school district was told to file an appeal, which was late.”¹³

The Commission should grant a similar waiver here. In the face of USAC’s own error, SCH and Alaska Communications believed that the period of support specified in the 2018 Funding Commitment Letter would be readily corrected by USAC without the need for a formal, written Request for Review. In pursuing that attempt to work with USAC to correct this error, they were backed up by reasonable reliance on verbal guidance from the USAC Help Desk, as well as an explicit finding of eligibility from the Bureau and favorable past precedent from USAC itself. Nevertheless, only after that effort failed did USAC direct Alaska Communications to file an appeal, by which time, the 60-day deadline specified in Section 54.720(a) had passed, as measured from the date of the 2018 Funding Commitment Letter.

¹² See Public Notice, CC Docket No. 02-6, “Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company,” DA 19-942 (Wir. Comp. Bur. rel. Sept. 30, 2019), at 6, n.18.

¹³ *Id.* (appeal of Reynolds School District 7, Fairview, OR); *see also id.* (appeal of Vermilion Parish School District, Abbeville, LA, which “opened a case in EPC to work with USAC personnel instead of filing an appeal” following USAC’s issuance of an erroneous Funding Commitment Decision Letter, and was only directed by USAC to file an appeal after the filing deadline had passed”).

Indeed, Alaska Communications remains mystified by USAC's decision not to correct its error. It appears that either USAC staff failed to understand the basis on which the SCH and Alaska Communications were seeking relief, or that they unwilling to engage sufficiently to address it in the absence of a further directive from the Bureau. Regardless, the Bureau should not permit USAC to foreclose review of its decisions and correction of its own errors merely by creating false expectations of relief that lull applicants into allowing the 60-day deadline for filing a formal Request for Review to pass.¹⁴

Relief is particularly important in this case, in light of the uniquely important role of the RHC Telecommunications Program in supporting delivery of health care in rural and remote areas of Alaska. As the Commission recently recognized, the Telecommunications Program fills a critical void in the state, "given the vast number of communities without access to roads and the unique cost considerations they may face for obtaining service."¹⁵ As a result, more than half

¹⁴ In the E-rate context, the Bureau has repeatedly waived the Section 54.720(a) filing deadline to address USAC's own errors, in some cases where the appeal was filed more than a year late. *Schools and Libraries Universal Service Support Mechanism, Requests for Review and/or Requests for Waiver of Decisions of the Universal Service Administrator by Animas School District 6, et al.*, CC Docket No. 02-6, Order, DA 11-2040, 26 FCC Rcd 16903 (Wir. Comp. Bur. 2011), at ¶ 4, n.13 (granting waiver because, "[i]f USAC had not erred, the petitioners would not have had to file an appeal"); *Schools and Libraries Universal Service Support Mechanism, Request for Review of Decisions of the Universal Service Administrator by Savannah R-III School District, Savannah, Missouri*, CC Docket No. 02-6, Order, DA 08-1890, 23 FCC Rcd 12053 (Wir. Comp. Bur. 2008) ("*Savannah R-III*"), at ¶ 6, n.30 (waiving the filing deadline where USAC had unreasonably denied the applicant's appeals, finding that, "there is good cause to waive section 54.720 of the Commission's rules [because] the issue before the Commission should have been resolved with USAC before Savannah resorted to filing another appeal"); see also Public Notice, "Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company, CC Docket No. 02-6, DA 18-299, 33 FCC Rcd 2908 (Wir. Comp. Bur. 2018) (waiving appeal filing deadline for Bienville Parish, LA, Application No. 161045894, because the appeals involved errors by USAC).

¹⁵ *Promoting Telehealth in Rural America*, WC Docket No. 17-310, Report and Order, FCC 19-78 (rel. Aug. 20, 2019), at ¶ 21; see also *id.* at ¶ 34 ("Alaska is in a unique situation where most of the land mass is inaccessible by road. Many communities are only accessible by plane or boat. The barriers to providing telecommunications services to these off-road communities are thus typically higher than on-road communities.").

of the total number of funding commitments under the Telecommunications Program, and some two-thirds of demand for Telecommunications Program support, are sought for remote delivery of health care services in Alaska.¹⁶ Indeed, Alaska Communications fulfilled its contract with SCH and provided the services in question for the full term, until October 4, 2018. In this case, while the time period at issue – barely more than two months – is short, the cost of the associated services is significant, and the lack of compensation imposes a hardship on Alaska Communications.

To serve its many of its customers in Alaska in areas outside of Anchorage, Fairbanks, and Juneau, Alaska Communications must purchase costly long-haul transport services from other, unaffiliated carriers. This is the case even in rural and Bush communities where Alaska Communications serves as the incumbent local exchange carrier. Sitka, for example, is located on an island in the remote coastal southeast of Alaska. The only terrestrial transport facility that connects Sitka to telecommunications networks on the mainland is the Alaska United Southeast undersea cable, owned by GCI Communication Corp. (“GCI”).¹⁷ Alaska Communications must keep current with GCI’s monthly recurring charges for transport capacity on that cable in order to serve SCH, regardless of whether it is ultimately able to recover the cost of that capacity in the future from its customer or universal service mechanisms. Were Alaska Communications unable to do so, there would be a real and imminent risk that GCI would suspend Alaska Communications’ access to capacity on that cable, and Alaska Communications’ service to SCH would likewise cease to function.

¹⁶ *Id.* at ¶ 10 and n.30.

¹⁷ See TeleGeography Submarine Cable Map, Alaska United Southeast, *available at*: <https://www.submarinecablemap.com/#/submarine-cable/alaska-united-southeast> (visited Oct. 9, 2019).

IV. Conclusion

For the foregoing reasons, Alaska Communications hereby requests that the Bureau direct USAC to provide FY 2018 support under Funding Request No. 18464381 for the entire service period, through October 4, 2018, or at a minimum through September 30, 2018, as contemplated by the Bureau Letter approving Alaska Communications' FY 2018 rural rates. To the extent required, Alaska Communications also requests that the Bureau waive the 60-day deadline for filing this Request for Review, as discussed herein.

Respectfully Submitted,

Richard R. Cameron
Cameron Law & Policy LLC
2550 M St N.W., Suite 319
Washington, D.C. 20037
(202) 230-4962
Richard@CameronLawPolicy.com

Leonard A. Steinberg
Senior Vice President & General Counsel
Alaska Communications Systems Group, Inc.
600 Telephone Avenue
Anchorage, Alaska 99503

for Alaska Communications

Exhibit A

**Funding Commitment Letter, Sitka Community Hospital, HCP No. 11194,
Funding Request No. 15722831 (Dec. 23, 2015)**

Date: 23-Dec-2015
Program: Telecommunications Program
Funding Year: 2015
Health Care Provider (HCP) Name: Sitka Community Hospital
HCP Number: 11194
HCP Contact Name: Grant Turner
HCP Contact Email: gturner@sitkahospital.org
HCP Contact Phone: (907) 747-0338
FCC Form 465 Application Number: 43155113
Funding Request Number (FRN): 15722831

The Universal Service Administrative Company (USAC)'s Rural Health Care Program completed the review of the Funding Request and Certification Form (FCC Form 466) submitted on behalf of the HCP referenced above. Based on the information provided, USAC determined that the HCP is eligible for the funding shown below. Additionally, if the HCP submitted a contract or service agreement with the form, the outcome of the contract review is included in this letter.

HCP Physical Location: 209 Moller Avenue, Sitka, AK, 99835
Service Type: MPLS
Bandwidth: 80 Mbps
Service Provider Name: Alaska Communications Systems Holdings, Inc.
SPIN/498 Filer ID: 143002702
Billing Account Number: 1867218
Contract ID: 867704
Contract Friendly Name: ACS 2015 Contract

Funding Start Date	Funding End Date	Months of Support	Non-Recurring Support Amount	Monthly Recurring Support Amount	Total Support Amount	Contract Expiration Date
14-Oct-2015	30-Jun-2016	8.58065	\$0.00	\$81,812.00	\$702,000.14	26-Jul-2018

Note that the funding end date will coincide with the contract expiration date. Therefore, if the contract ends during this funding year, the HCP must participate in competitive bidding before selecting a new service provider (or continuing formerly contracted services on a month-to-month basis) to be eligible for funding for the entirety of the funding year.

It is the HCP's responsibility to review and verify that all information on this FCL is accurate. All account holders and the service provider listed on the form have received this FCL, and it is saved in the *My Documents* section of *My Portal*.

Contract/Service Agreement Endorsement Determination: Evergreen

Evergreen: For the life of the contract, the HCP is exempt from competitive bidding for the service(s)

identified above, and therefore is not required to post a FCC Form 465 (Description of Services Requested and Certification Form). However, the HCP must submit the FCC Form 466 (and the FCC Form 467) to receive funding each year.¹

The Evergreen endorsement and competitive bidding exemption end when the contract expires.

The HCP must participate in competitive bidding at the expiration of the contract. This means that the HCP must post a new FCC Form 465 and wait 28 days before selecting a new service provider (or when continuing the formerly contracted service on a month-to-month basis). Funding Requests (FCC Form 466) must be subsequently submitted in all cases.

If, at any time, the funded services are not provided to the HCP, or the HCP is not otherwise receiving the approved funding, the HCP must notify USAC immediately.

The HCP entered Billing Account Number, certifications, and all other information provided on FCC Forms 465, 466, and 467 may be subject to audit by USAC and the FCC.² HCPs are subject to audits and other reviews that USAC and/or the FCC may undertake to ensure that the universal service support is used in compliance with FCC program rules. If the funded service(s) is not used in compliance with program rules, program participants will be subject to enforcement activities and other means of recourse by USAC and other appropriate federal, state, and local authorities.

Next Steps

Submit an FCC Form 467 (*Connection Certification Form*), which confirms receipt of the services for which funding has been approved, and the date on which the service provider began providing those services (and when those services ended, if prior to the end of the funding year). To submit the FCC Form 467, go to the *My Forms* tab of *My Portal* and find the applicable Form 466 or FRN, and click on the "Create 467" button. Once the Form 467 is approved, the HCP and the service provider will receive a copy of the HCP Support Schedule (HSS). Receipt of the HSS means that the service provider must begin crediting the HCP for the funding amount (if it has not yet done so) and may begin to invoice USAC.

Errors and Corrections:

If the funding amount, funding dates, or contract information is incorrect or missing, please contact the Rural Health Care Program Help Desk immediately by phone at (800) 453-1546 or by email at rhc-assist@usac.org.

Appeals:

Before appealing a funding decision, contact the RHC Helpdesk. To appeal this funding decision, deliver a letter of appeal to USAC within 60 days of the date of this letter. Detailed instructions for filing appeals are available at: <http://www.usac.org/about/about/program-integrity/appeals.aspx>.

Details about and definitions of all terms used in this FCL are provided on the USAC website (www.usac.org/rhc).

For More Information

Please do not reply directly to this email, as emails to this account will not be delivered to the RHC Program team. For questions or assistance, contact the Rural Health Care Program Help Desk at (800) 453-1546 or by email at rhc-assist@usac.org.

For more information about the Telecommunications Program application process, refer to the Telecom

Program Getting Started web page on the USAC web site at <http://www.usac.org/rhc/telecommunications/getting-started/>.

For more information about the FCC Form 467, visit the Telecommunications Program Forms web page at <http://www.usac.org/rhc/telecommunications/tools/forms/>.

The primary account holder will be copied on this and all correspondence from USAC related to this HCP.

¹ 47 C.F.R. 54.623(d).

² 47 C.F.R. 54.619(c).

Exhibit B

**Email correspondence from Matthew Squire, USAC, to Abigail Hanley,
Alaska Communications (July 19, 2017)**

Subject: RE: Our Discussion regarding Start and Stop Dates
Date: Wednesday, July 19, 2017 at 4:58:58 PM Eastern Daylight Time
From: Matthew Squire
To: Hanley, Abigail F
Attachments: image001.gif

Abby,

Yes this information is correct.

Also if the service starts earlier than the estimated start date, the existing service must be shortened with the 467, and the 466 for the upgraded service revised by USAC to extend the funding time period.

We would hope to process these requests ASAP, but it's important that the HCP notify us regarding the need to revise the 466, otherwise it's possible that they may experience a funding gap.

Thanks,

Matthew Squire
Program Analyst
Rural Health Care Program
Universal Service Administrative Company
700 12th Street, NW, Suite 900
Washington, DC 20005
202 772 6280

From: Hanley, Abigail F [mailto:Abigail.Hanley@acsalaska.com]
Sent: Wednesday, July 19, 2017 2:53 PM
To: Matthew Squire <Matt.Squire@usac.org>
Subject: Our Discussion regarding Start and Stop Dates

Hello,

Thank you for taking time to explain USAC's plan with start and stop dates in regards to upgrades. I wanted to make sure that I understood everything we discussed so that I can assist my customers with estimating their start dates.

Once a Start Date has been entered for the post-upgrade 466 the stop date on the pre-upgrade will be updated to match.

If service starts later than the estimated start date the customer should:

1. Submit the post upgrade 467 with actual start date
2. Contact RHC (using RHC-assist email?) to explain the situation and request that the stop date on the post-upgrade be extended.

How long after contacting RHC should the customer see an updated 466?

Please correct me if I understood incorrectly.

One question that you are probably getting a lot – It would really help us estimate when service will be installed if we had a timeframe for when the FCLs are expected to be issued.

Thank you,

Abby Hanley

Revenue Research Specialist

ahanley@acsalaska.com

Desk: (907) 564-7216



Customer Service: [800] 808-8083

alaskacommunications.com

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Exhibit C

**USAC Letter to Mr. Ramon Reyes, South Peninsula Hospital, Funding
Request No. 1723532, “Notice of Resolved Issue” (June 14, 2019)**

Notice of Resolved Issue

Via Electronic Mail

June 14, 2019

Mr. Ramon Reyes
South Peninsula Hospital
4300 Bartlett St.
Homer, AK 99603

Re: South Peninsula Hospital – Appeal of USAC’s Decision for
Funding Request Number 1723532

Dear Mr. Reyes:

The Universal Service Administrative Company (USAC) has completed its evaluation of the December 5, 2017 letter of appeal (Appeal) submitted by South Peninsula Hospital (South Peninsula), health care provider (HCP) number 11386.¹ On October 9, 2017, USAC denied South Peninsula’s funding request for support under the federal Universal Service Rural Health Care Telecommunications Program (Telecom Program) for funding year 2017 (FY 2017).² The Appeal requests that USAC reverse the denial of funding request number (FRN) 1723532.³

USAC has reviewed the Appeal and the facts related to this matter and has determined that South Peninsula complied with the Federal Communications Commission (FCC) competitive bidding rules.⁴ Specifically, South Peninsula was exempt from competitive bidding because it was seeking support for services provided under a valid Evergreen contract. Therefore, USAC will reverse the denial of funding for FRN 1723532 and will proceed with its review of South Peninsula’s funding request.

Background

FCC rules require eligible health care providers (HCPs) seeking funding from the Telecom Program to conduct a competitive bidding process for eligible services by submitting an FCC Form 465 (Description of Services Requested & Certification Form) and waiting at least 28 days before

¹ See Letter from Ramon V. Reyes, Senior Systems Administrator, South Peninsula Hospital to the Rural Health Care Division, USAC (Dec. 5, 2017) (Appeal); see Email from Ramon V. Reyes, Senior Systems Administrator, South Peninsula Hospital to the Rural Health Care Division, USAC (Dec. 5, 2017) (Appeal Email).

² See Email from the Rural Health Care Division, USAC to Ramon V. Reyes *et. al*, South Peninsula Hospital. (Oct. 9, 2017) (Administrator’s Denial).

³ *Id.*

⁴ 47 C.F.R. § 54.642(a).

selecting a service provider.⁵ The date on which the 28 day waiting period ends is the allowable contract selection date (ACSD), and is the earliest date that HCPs may enter into a contract with a service provider and receive Telecom Program support for a particular funding year.⁶

After an HCP undergoes the competitive bidding process and submits the FCC Form 466 (Funding Request and Certification Form), USAC may designate certain service contracts as “Evergreen” if the contract meets the criteria outlined in FCC rules.⁷ Once a contract has been designated as Evergreen, then, for the duration of the term of the contract, the HCP is not required to annually re-bid the services provided under the contract and is not required to post a Form 465.⁸

South Peninsula’s Funding Request

On May 5, 2014, South Peninsula submitted an FCC Form 465, requesting bids for services for FY 2013.⁹ On June 25, 2014, South Peninsula entered into a three (3) year agreement with Alaska Communications Systems Holdings, Inc. (ACS), which was signed by ACS and South Peninsula on June 20, 2014 and June 25, 2014, respectively.¹⁰ On October 15, 2014, South Peninsula notified USAC that services would not be installed until FY 2014.¹¹ On June 30, 2014, South Peninsula underwent competitive bidding for FY 2014¹², and, subsequently, submitted an FCC Form 466 to seek support for 150 Megabits per second (Mbps) of Multi-Protocol Label Switching (MPLS) service provided under South Peninsula’s June 25, 2014 contract with ACS in FY 2014.¹³ On March 26, 2015, USAC issued a funding commitment letter (FCL) for FRN 1457464, and deemed South Peninsula’s contract with ACS as Evergreen.¹⁴ The contract indicated that the contract expired on the anniversary of the billing commencement date.¹⁵ On the FCL, USAC

⁵ See 47 C.F.R. § 54.603(a), (b)(3); Health Care Providers Universal Service, Description of Services Requested & Certification Form, OMB 3060-0804 at 2 (July 2014) (FCC Form 465); Form 465 Instructions, Rural Health Care Universal Service Mechanism, OMB 3060-0804 at 1 (July 2014) (FCC Form 465 Instructions).

⁶ *Id.*

⁷ 47 C.F.R. § 54.642(h)(4) (outlining the requirements for Evergreen contracts).

⁸ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd at 16678, 16803, para. 261 (2012) (*Healthcare Connect Fund Order*); 47 C.F.R. § 54.642(h)(4). See also USAC Website, Rural Health Care, Evergreen Contracts,

<http://www.usac.org/rhc/telecommunications/health-care-providers/evergreen-contracts.aspx> (last visited Sept. 12, 2017) (Evergreen Contracts Guidance). An applicant is not required to annually re-bid a service contract that has been designated as Evergreen by USAC or post a Form 465 for the life of the contract.

⁹ See FY 2013 FCC Form 465, Application Number 43142282 (May 5, 2014).

¹⁰ See Alaska Communications, Alaska Communications Enterprise Services Agreement, No. 800823 (June 25, 2014) (ACS Contract).

¹¹ See Email from Jason Granet, USAC to South Peninsula Hospital (Oct. 15, 2014).

¹² See FY 2014 FCC Form 465, Application Number 43145785 (June 30, 2014).

¹³ See FY 2014 FCC Form 466 for FRN 1457464 (Mar. 11, 2015).

¹⁴ See Funding Commitment Letter (FCL) for FRN 1457464 (Mar. 25, 2015).

¹⁵ See ACS Contract at 2.

Mr. Ramon Reyes
South Peninsula Hospital
June 14, 2019
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listed June 24, 2017 as the contract expiration date, which is 3 years after the date that South Peninsula signed its contract with ACS.¹⁶

On June 7, 2017, South Peninsula submitted an FCC Form 466 seeking support for 150 Megabits Mbps of MPLS service provided by ACS for FY 2017 (*i.e.* July 1, 2017 through June 30, 2018).¹⁷ On the FCC Form 466, South Peninsula indicated that its contract with ACS was signed on June 25, 2014 and expired on February 9, 2018.¹⁸ With the FCC Form 466, South Peninsula provided a copy of its Evergreen contract and an invoice from ACS. On October 9, 2017, USAC denied FRN 1723532 because South Peninsula violated the FCC's Telecom Program competitive bidding rules.¹⁹ On December 5, 2017, South Peninsula appealed USAC's denial of FRN 1723532.²⁰

Administrator's Decision on Appeal

Based on a review of the facts, USAC finds that South Peninsula was exempt from competitive bidding because it was seeking support for services provided under a valid Evergreen contract. Therefore, USAC will reverse the denial of funding for FRN 1723532 and proceed with its review of South Peninsula's funding request. USAC may request additional information during its review of the funding request. South Peninsula is required to respond to any information request from USAC within 14 calendar days of receipt of USAC's notice.²¹ Furthermore, USAC's decision to reverse the denial of funding for FRN 1723532 does not guarantee that support will be approved under this FRN.

USAC will consider the matters raised in this appeal closed unless South Peninsula notifies USAC within 30 days from the date of this letter and provides a detailed explanation of any issues it believes remain outstanding.

Sincerely,

/s/ Universal Service Administrative Company

¹⁶ See *id.*; see also ACS Contract at 2. The contract states that "this agreement shall be effective on the date of execution of both parties ("Effective Date") and will terminate on the applicable term anniversary of the Billing Commencement Date (the "Initial Term") as set forth in this Agreement."

¹⁷ See FY 2017 FCC Form 466 for FRN 1723532 (June 7, 2017).

¹⁸ See *id.*

¹⁹ See Administrator's Denial.

²⁰ See Appeal.

²¹ See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Report and Order, 27 FCC Rcd 16678, 16803, para. 3 (2015) (*Form 466 Deadline Order*).

Exhibit D

**Declaration of Abigail Hanley, Program Manager, Compliance,
Alaska Communications**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Declaration of Abigail Hanley

COMES NOW the Declarant, and swears as follows:

1. My name is Abigail Hanley, and I am submitting this Declaration in support of a Request for Review and Provisional Petition for Waiver (the “Request for Review”), to which this Declaration is attached. The Request for Review is being filed by Alaska Communications Systems Holdings, Inc. on behalf of its subsidiaries participating in the FCC’s Rural Health Care (“RHC”) universal service program (“the Company”) concerning RHC Telecommunications Program funding for 80 Mbps MPLS service (the “Service”) provided to Sitka Community Hospital (“SCH”), a customer of the Company that receives services supported by the RHC Telecommunications Program.

2. I am Program Manager, Compliance for the Company. In such capacity, I have had personal discussions with Grant Turner in his role as IT Director for SCH and with the Universal Service Administrative Company (“USAC”) concerning Funding Request Number (“FRN”) 18464381 in the FCC’s RHC Telecommunications Program for Funding Year 2018, which discussions are described below. I have read the Request for Review and the facts stated therein are true, correct, and complete, to the best of my knowledge, information, and belief.

3. The Company provided the Service to which FRN 18464381 relates under a contract signed by Sitka on July 27, 2015 for a three-year term of service (the “2015 Contract”). The three-year term of service began after the service was installed and functioning, on the “Billing Commencement Date,” as defined in the 2015 Contract. In this case, the Billing Commencement Date occurred on October 14, 2015, meaning that the three-year term for the 80 Mbps MPLS service under the 2015 Contract ran through October 13, 2018.

4. On July 19, 2017, I called Matthew Squire, Program Analyst, Rural Health Care Division, USAC, to ask how the Company's customers should proceed in requesting RHC Telecommunications Program support in years when they were upgrading service under a new contract. After we discussed the matter, Mr. Squire confirmed to me in an exchange of email messages that USAC does not require a rural healthcare provider in that situation to file a separate request for month-to-month support to guard against the possibility that the upgrade might not be installed before the end of the Evergreen term of its previous contract. Rather, Mr. Squire confirmed by email that, "[o]nce a Start Date has been entered for the post-upgrade 466 the stop date on the pre-upgrade will be updated to match."

5. In the Fall of 2018, immediately following FCC approval of the Company's rural rates for FY2017, the Company submitted its FY2018 rural rates for FCC approval in accordance with rules for the RHC Telecom Program. In November 2018, the FCC initially approved those rural rates, as modified in a final letter from the Wireline Competition Bureau to USAC dated December 14, 2018. The FCC approved the rate for the Service in Funding Request No. 18464381 for an estimated period of three months because the Service had already been replaced by a new 100 Mbps MPLS service on October 4, 2018.

6. USAC's December 21, 2018, Funding Commitment for the Service committed an incorrect support amount, terminating on July 26, 2018. That termination date was incorrect based on the procedure USAC had previously communicated to me, under which USAC should have automatically adjusted the support period to match the actual date of the service upgrade during the funding year.

7. That termination date was also incorrect because the three-year term of the Service did not start on the signature date of the 2015 Contract, but rather on the Service Commencement

Date, which was October 14, 2015. Therefore, the Evergreen endorsement should have been valid until October 13, 2018, and no adjustment to that date should have been necessary.

8. Thereafter, Mr. Turner assumed a new role within the City of Sika government, but nevertheless filed the Form 467 Certifications for both the Service and the upgraded 100 Mbps MPLS services received by SCH during Funding Year 2018 because he remained SCH's authorized USAC representative.

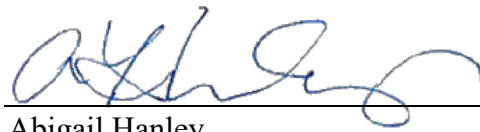
9. Following Mr. Turner's departure, I assumed responsibility for working with the USAC Rural Health Care staff to correct the Funding Year 2018 term of support for the Service. On or about May 1, 2019, after Mr. Turner was unable to obtain any adjustment of the support dates from the USAC Rural Health Care staff, he summarized his conversations with USAC concerning this matter for me, and forwarded to me USAC's December 21, 2018 Funding Commitment Letter.

10. On or about June 5, 2019, I sent an e-mail to "RHC-Assist" to renew the request for USAC Rural Health Care staff to adjust the expiration date of the 2015 Contract and the 2018 Funding Commitment Letter, as previously discussed. On or about June 7, 2019, with the assistance of counsel and in response to a request from USAC staff members, the Company relayed the facts to USAC and asked USAC to commit funding for the full period contemplated by the Bureau's December 14, 2018 letter. In that correspondence, the Company confirmed that it had, in fact, provided the service to Sitka from July 1 through October 4, 2018, when a replacement contract took effect.

11. On August 20, 2019, in a telephone conference including Erin Williams of USAC, myself and outside counsel for the Company, USAC indicated to us that it could not confirm the advice given by the USAC "Help Desk" and, in any event, it would not change the

funding dates at this point. USAC indicated that the only avenue for correcting these dates would be to file a Request for Review to appeal their decision through the FCC.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.



Abigail Hanley
Program Manager, Compliance
Alaska Communications Systems Group, Inc.

Executed on October 21, 2019